



**STATE OF TENNESSEE**  
**DEPARTMENT OF HEALTH**  
ANDREW JOHNSON TOWER, 5TH FLOOR  
710 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243

**BILL LEE**  
GOVERNOR

**LISA PIERCEY, MD, MBA, FAAP**  
COMMISSIONER

September 22, 2021

Krista Lee Carsner, Director  
Fiscal Review Committee  
Suite G-102, Cordell Hull Building  
425 5<sup>th</sup> Avenue North  
Nashville, TN 37243

and

Mike Perry, Chief Procurement Officer  
Central Procurement Office, Department of General Services  
22<sup>nd</sup> Floor, Tennessee Tower  
312 Rosa L. Parks Avenue  
Nashville, TN 37243

Dear Director Carsner and CPO Perry:

The Department of Health requests approval to establish a sole-source, three-year contract with two renewal options with Natus Medical Incorporated for software support and maintenance for the Newborn Screening Neometrics system. The maximum liability for this contract is \$825,250.00 for the initial three-year term and is 100% funded by current services or fees collected by the Newborn Screening program.

The Newborn Screening laboratory uses this laboratory information system to enter patient demographic information, as well as testing results from the newborn screening. The Newborn Screening follow-up program tracks any infants testing as abnormal for one of 71 genetic disorders and generates letters to the primary care provider, genetic specialists and even parents as necessary to ensure proper diagnosis of the infant. Without this system, the laboratory results and follow-up would be significantly slowed in the process of reporting results and tracking infants with disease.

Natus Medical Inc. is the only vendor who can supply software support and maintenance to the Neometrics system. This supplier does not have a physical presence in Tennessee.

The Department of Health respectfully submits the above referenced contract for consideration and approval by the Fiscal Review Committee.

Sincerely,

A handwritten signature in black ink that reads "Lisa Piercey MD" with a stylized flourish at the end.

Lisa Piercey, MD, MBA, FAAP  
Commissioner

## Supplemental Documentation Required for Fiscal Review Committee

<b>*Contact Name:</b>	Dr. Marc Rumpler	<b>*Contact Phone:</b>	615-262-6302
<b>*Presenter's name(s):</b>	Olivia Spears, Lindsay Oliveras		
<b>Edison Contract Number: <i>(if applicable)</i></b>	TBD	<b>RFS Number: <i>(if applicable)</i></b>	N/A
<b>*Original or Proposed Contract Begin Date:</b>	November 22, 2021	<b>*Current or Proposed End Date:</b>	November 21, 2024
<b>Current Request Amendment Number: <i>(if applicable)</i></b>		N/A	
<b>Proposed Amendment Effective Date: <i>(if applicable)</i></b>		N/A	
<b>*Department Submitting:</b>		Health	
<b>*Division:</b>		Division of Lab Services	
<b>*Date Submitted:</b>		09/22/2021	
<b>*Submitted Within Sixty (60) days:</b>		Yes	
<b><i>If not, explain:</i></b>			
<b>*Contract Vendor Name:</b>		Natus Medical Inc.	
<b>*Current or Proposed Maximum Liability:</b>		\$825,250.00	
<b>*Estimated Total Spend for Commodities:</b>		N/A	
<b>*Current or Proposed Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i></b>			
<b>FY:22</b>	<b>FY:23</b>	<b>FY:24</b>	<b>FY:25</b>
\$271,750.00	\$276,750.00	\$276,750.00	0.00
<b>*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from Edison)</i></b>			
<b>FY:</b>	<b>FY:</b>	<b>FY:</b>	<b>FY:</b>
\$	\$	\$	\$
<b>IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:</b>		N/A	
<b>IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:</b>		N/A	
<b>IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:</b>		N/A	

## Supplemental Documentation Required for Fiscal Review Committee

<b>*Contract Funding Source/Amount:</b>			
<b>State:</b>		<b>Federal:</b>	
<i>Interdepartmental:</i>		<i>Other:</i>	100%
If “ <i>other</i> ” please define:		Current services or fees collected from Newborn Screening	
If “ <i>interdepartmental</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>			
<b>*What were the projected costs of the service for the entire term of the contract prior to contract award?</b> <b>How was this cost determined?</b>		\$825,250.00  Cost was determined by vendor quotation.	
<b>*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.</b>		The LIMS and database were developed by NATUS. NATUS staff know the system completely for troubleshooting and maintenance. Acquiring a sole source contract enables continual use of the system with no interruptions and is the most cost-effective option for the State. There is no other vendor that can provide these services unless the State contracted to purchase a new LIMS. A new system would require years of design and time for implementation and training of lab and follow-up employees on its use. Additionally, a new system would require that the old system be functional for at least 2 years since our licensing agency requires records to be kept for that length of time (so maintenance and support costs would still be incurred).	



## STS Pre-Approval Endorsement Request E-Mail Transmittal

**TO :** STS Contracts  
Department of Finance & Administration  
[https://tn.service-now.com/sp?id=sc\\_cat\\_item&sys\\_id=a912fd4213b46b80316a73d36144b097](https://tn.service-now.com/sp?id=sc_cat_item&sys_id=a912fd4213b46b80316a73d36144b097)

For additional instructions please visit:  
<https://www.teamtn.gov/sts/planning-services/information-systems-planning/endorsement-request.html>

**FROM :** Scott Creel  
E-mail : [Scott.Creel@tn.gov](mailto:Scott.Creel@tn.gov)

**DATE :** March 30, 2021 Received by STS on Tuesday, March 30, 2021

**RE :** Request for STS Pre-Approval Endorsement

**Applicable RFS #** HL288 (END0000796)

**State Security Confidential Information Applicability**

Under Tenn. Code Ann. §10-7-504(i) vendor identity or a description of the goods or services provided by the vendor shall be confidential.

- ☐ Applicable  
☒ Not Applicable

Additional language is attached and endorsement is contingent upon inclusion of this additional language:

- ☒ Applicable  
☐ Not Applicable

**STS Endorsement Signature & Date:**

**Stephanie Dedmon,**  
**CIO (WMH)**

Digitally signed by Stephanie  
Dedmon, CIO (WMH)  
Date: 2021.04.12 10:29:51 -05'00'

**Chief Information Officer**

*NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.*

<b>Applicable RFS #    HL288 (END0000796)</b>
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Strategic Technology Solutions (STS) pre-approval endorsement is required pursuant to procurement regulations pertaining to contracts with information technology as a component of the scope of service. This request seeks to ensure that STS is aware of and has an opportunity to review the procurement detailed below and in the attached document(s). This requirement applies to any procurement method regardless of dollar amount.

Please indicate STS endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

<b>Contracting Agency</b>	<b>Health</b>
<b>Agency Contact</b> (name, phone, e-mail)	<b>Scott Creel, (615) 770-1152, Scott.Creel@tn.gov</b>
<b>Attachments Supporting Request</b> (mark all applicable) Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to STS. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. STS is aware that these documents will not have CPO signature when submitted with this request. <ul style="list-style-type: none"> <li><input type="checkbox"/> Solicitation Document</li> <li><input checked="" type="checkbox"/> Special Contract Request</li> <li><input type="checkbox"/> Amendment Request</li> <li><input type="checkbox"/> Proposed Contract/Grant or Amendment</li> <li><input type="checkbox"/> Original Contract/Grant and Previous Amendments (if any)</li> </ul>	
<b>Information Systems Plan (ISP) Project Applicability</b> To avoid delay of STS pre-approval, the applicability of an ISP project to the procurement must be confirmed with agency IT staff prior to submitting this request to STS. If necessary, agency IT staff should contact STS Planning with questions concerning the need for an ISP project. IT Director/Staff Name Confirming (required): Brandon Corbin, CIO - Health IT <ul style="list-style-type: none"> <li><input type="checkbox"/> Applicable – Approved ISP Project#</li> <li><input checked="" type="checkbox"/> Not Applicable</li> </ul>	
<b>Subject Information Technology Service Description</b> Provide a brief summary of the information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, <i>etc.</i> As applicable, identify the contract or solicitation sections related to the IT services. Continued maintenance and support of Neometrics.	

## Attachment: STS Endorsement Conditions

**This STS endorsement is contingent upon inclusion of the additional language below.**

STS endorses with the understanding that the following language be added to the Maintenance Requirements section of the Specifications document:

The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.

If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

Additionally, STS has the following comments for Health's consideration:

- 1) STS security recommends adding compliance with the Enterprise Information Security Policies <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html> to Maintenance Requirements: 1. of the Specifications document.
- 2) If the Contractor will have access to confidential data during the performance of this contract, the agency should consider adding the Personally Identifiable Information (PII) language from the CPO FA contract template to this contract's special terms and conditions.

Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

## **Attachment: STS Endorsement Conditions**

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law. The obligations set forth in this Section shall survive the termination of this Contract.

**SCR\_Sole\_Source**

Subject 34301 - Natus Software support and maintenance

Review/Edit Approvers

**SCR Sole Sourcing**

▼ **SCR\_Sole\_Source: 5078:Approved**

 View/Hide

SCR Sole Sourcing

**Approved**

✓ Lindsay Oliveras  
Agency Forms Approver  
05/10/21 - 8:05 AM

**Skipped**

⚠ Rachel Hardaway  
Agency Forms Approver  
05/07/21 - 9:03 AM

**Approved**

✓ Tara Roark  
CPO Sourcing Forms Approver  
05/10/21 - 9:52 AM

**Approved**

✓ Kevin C Bartels  
CPO Standard Forms Approver  
05/12/21 - 10:18 AM

**Approved**

✓ Christopher Salita  
CPO Director Forms Approver  
05/14/21 - 9:05 AM

**Approved**

✓ Bryan S Chriske  
COT Treasury Form  
05/17/21 - 3:14 PM

▶ **Comments**

OK





# Special Contract Request

This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable.

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

Upload the completed document and route for approvals by selecting the appropriate SCR e-Form type in Edison. For additional guidance, please see the Special Contracts Request e-Form Job Aid available online at the following:

<https://www.teamtn.gov/cpo/learning-development/cpo-job-aids.html>.

<b>APPROVED</b> [Upload this SCR to e-Forms in Edison. Approvals will be captured in Edison Workflow.]		<b>APPROVED</b> [Upload this SCR to e-Forms in Edison. Approvals will be captured in Edison Workflow.]	
CHIEF PROCUREMENT OFFICER	DATE	COMPTROLLER OF THE TREASURY	DATE

**Approval of the SCR does not constitute approval of the final contract.**

Request Tracking #	HL00000288
1. Contracting Agency	Department of Health/ Division of Laboratory Services
2. Type of Contract or Procurement Method	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
3. Requestor Contact Information	M. Christine Dorley, PhD 630 Hart Lane Nashville, TN 37243 <a href="mailto:M.Christine.Dorley@tn.gov">M.Christine.Dorley@tn.gov</a> 615-262-6352
4. Brief Goods or Services Caption	Software support and maintenance
5. Description of the Goods or Services to be Acquired	Provide support and maintenance to current Laboratory Information Management System (LIMS) and database for newborn screening.
6. Proposed Contractor	Natus Medical Incorporated

<b>Request Tracking #</b>	<b>HL00000288</b>
<b>7. Name &amp; Address of the Contractor's principal owner(s)</b> – NOT required for a TN state education institution	<b>Walter Reichert</b> Neometrics, a division of Natus 6701 Koll Center Parkway, Suite 120 Pleasanton, CA 94566 Phone: (512) 996-8515 Fax: (631) 457-4444 Email: <a href="mailto:Walter.Reichert@natus.com">Walter.Reichert@natus.com</a>
<b>8. Proposed Contract Period</b> – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	<b>36 months</b>
<b>9. Strategic Technology Solutions ("STS") Pre-Approval Endorsement Request</b> – information technology (N/A to THDA)	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached
<b>10. eHealth Pre-Approval Endorsement Request</b> – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
<b>11. Human Resources Pre-Approval Endorsement Request</b> – contracts with an individual, state employee training, or services related to the employment of current or prospective state employees	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
<b>12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.</b>	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
<b>13. Maximum Contract Cost</b> – with ALL options to extend exercised	<b>\$ 850,250.00</b>
<b>14. Was there an initial government estimate? If so, what amount?</b>	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, \$
<b>15. Cost Determination Used-</b> How did agency arrive at the estimate of expected costs?	<b>Vendor quotation</b>
<b>16. Explanation of Fair and Reasonable Price-</b> Explain how agency determined that price is fair and reasonable	<b>For a one year PO which we are currently under (expires 6/30/21) for provision of support and maintenance the cost is \$251,750.00. We are asking for continual support for our current software for existing modules and maintenance as well as software support and maintenance for two new modules that are being added (Neonatal Abstinence Syndrome (NAS) module and Birth Defects Surveillance System via Health Language 7 (BDSS-HL7 module). These are under a separate request for Family Health and Wellness.</b>
<b>17. Documentation of Discussions with Contractor-</b> How did agency document discussions with Contractor? Attach documentation to this request as applicable.	<b>Primarily via phone and email</b>

<b>Request Tracking #</b>	<b>HL00000288</b>
<b>18. Explanation of Need for or requirement placed on the State to acquire the goods or services</b>	We currently use the LIMS database designed by NATUS. To continue to provide much needed testing services for Tennessee infants, support and maintenance of our LIMS is critical to our mission to meet requirements of Tennessee Department of Health rules and regulations under Chapter 1200-15-1.
<b>19. Proposed contract impact on current State operations</b>	Supports current laboratory operation. Without software support and maintenance, testing newborns for critical metabolic and genetic disorders will be hindered with the worst case scenario to the infant being disability and or death.
<b>20. Justification</b> – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	The LIMS and database were developed by NATUS. NATUS staff know the system completely for troubleshooting and maintenance. Acquiring a sole source contract enables continual use of the system with no interruptions and is the most cost effective option for the State. There is no other vendor that can provide these services unless the State contracted to purchase a new LIMS. A new system would require years of design and time for implementation and training of lab and follow-up employees on its use. Additionally, a new system would require that the old system be functional for at least 2 years since our licensing agency requires records to be kept for that length of time (so maintenance and support costs would still be incurred).
<b>For No Cost and Revenue Contracts Only</b>	
<b>21. What costs will the State incur as a result of this contract? If any, please explain.</b>	
<b>22. What is the total estimated revenue that the State would receive as a result of this contract?</b>	
<b>23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.</b>	<input type="checkbox"/> NO <input type="checkbox"/> YES
<b>24. Summary of State responsibilities under proposed contract</b>	
<b>For Sole Source and Proprietary Procurements Only</b>	
<b>25. Evidence of Contractor's experience &amp; length of experience providing the goods or services to be procured.</b>	State lab has used the services of Natus since 1991.

<b>Request Tracking #</b>	<b>HL00000288</b>
<b>26. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.</b>	<input type="checkbox"/> <b>NO</b> <input checked="" type="checkbox"/> <b>YES,</b> <b>Method: sole source contract</b> <b>Name/Address:</b>  Neometrics, a division of Natus 6701 Koll Center Parkway, Suite 120 Pleasanton, CA 94566 Attn: Walter Reichert Phone: (512) 996-8515 Fax: (631) 457-4444
<b>27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives</b>	<b>Natus Medical Incorporated is the only vendor that can provide these services unless the State contracted to purchase a new LIMS. A new system would require years of design and time for implementation and training of lab and follow-up employees on its use.</b>
<b>Signature Required for all Special Contract Requests</b>	
<b>Signature of Agency head or authorized designee, title of signatory, and date</b> (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document) [Either upload signed SCR in Edison or capture authorized agency approval in Edison Workflow.]	
<div style="display: flex; justify-content: space-between;"> <div>Signature: _____</div> <div>Date: _____</div> </div>	



## **Neometrics Software, Support, and Maintenance**

### **Specifications**

To establish a multi-year agreement for software support and maintenance on current Laboratory Information System and Newborn Screening Database.

#### **Definitions:**

- A. Application: a software program that runs on a computer.
- B. Birth Defects Registry (BDR): the registry capturing Tennessee infants born with birth defects such as large head circumference.
- C. Bugs: the term used for software application errors.
- D. Client: a piece of computer hardware or software that accesses a service made available by a server as part of the client–server model of computer networks.
- E. Case Management System (CMS3): The Case Management System for following up of patients with an out of range result from the newborn screen.
- F. Crystal Reports: an application used to create reports based on Database queries.
- G. Database: an electronic storage for patient information which includes patient test values, demographic information such as date of birth, date specimen was collected, and patient name and contact information.
- H. Health Insurance and Portability and Accountability Act Business Associate Agreement (HIPAA BAA): the federal law and business agreement amongst multiple parties which protects sensitive patient information from being disclosed without patient consent or knowledge.
- I. Health Level 7 (HL7): a set of international standards used to provide guidance with transferring and sharing data between various healthcare providers.
- J. Integrated Case Management System (ICMS): the case management system used for following up of patients with an out of range result from the newborn screen.
- K. Metabolic Screening Data System, Version 4 (MSD4): the database used for specimen accessioning, demographic entry, storage of patient results and reporting of patient results.
- L. Neonatal Abstinence Syndrome Registry (NAS): the registry which captures information on babies exposed to opioid drugs while in the womb who after birth experience in the

womb who may experience certain long term problems such as hearing and vision loss, behavioral and learning problems, even speech and language issues.

- M. Patches: the term used for software application support updates or fixes for bugs.
- N. Remote Data Entry (RDE): The State web portal used for health care providers to enter patient demographic information securely.
- O. Remote Diagnosis (RDx): The State web portal used for diagnosis and allows the entry of hearing screen information remotely.
- P. Server: a piece of computer hardware or software (computer program) that provides functionality for other programs or devices, called "clients."
- Q. Secure Remote Viewer (SRV): The State web portal which allows health care providers to securely search for their individual patient results and print a copy. SRV is password protected and requires users to have a valid Tennessee medical license and when searching requires the users to enter two identifying pieces of information on the patient to enable retrieval of results.

#### **Maintenance Requirements:**

1. Supplier must maintain the applications MSDS4, CMS3, ICMS, RDE, RDX, SRV, HL7 interface (standard 2.5.1), BDR, and NAS and keep the Applications compliant with the State of Tennessee security requirements which includes the Enterprise Information Security Policies at <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html> . .
2. Supplier must have ability to remote into the State network for access to MSDS4, CMS3, ICMS, RDE, RDX, SRV, HL7 interface, BDR, and NAS for troubleshooting.
3. Supplier must appoint a maintenance contact and maintenance engineer for troubleshooting issue and questions.
4. Supplier must document all maintenance and repairs to the Applications within the online system in which requests for support are made.
5. The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
6. If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

#### **Software Requirements:**

1. Supplier must be HIPPA compliant and provide yearly training documentation of HIPAA compliance to the State.
2. Supplier must employ internet safety best practices and give yearly training documentation to the State.
3. Supplier must provide software updates or Patches as they become available.
4. Supplier must have the ability to add additional Applications as user need arises and Applications must have the ability to interact with existing Applications.

**Support Requirements:**

1. Supplier must give software support for troubleshooting issues and for building Crystal Reports from database queries.
2. Supplier must respond to issues with twenty-four (24) hours or one (1) working day with the exception of Federally and State observed holidays.
3. Supplier must have a web-based system for entering in requests for repairs and issues.
4. Supplier must provide telephone support during normal business hours (excluding holidays) from 7:00 a.m. CST through 5:00 p.m. CST.
5. Supplier must provide to the State a toll-free phone number for reporting issues with the system and requesting repairs.





**Invitation to Bid (ITB)**  
For Neometrics Software, Support, and Maintenance  
Event # 12004

**1. Section 1 -- Background Information**

- 1.1. To establish a multi-year agreement for software support and maintenance on current Laboratory Information System and Newborn Screening Database.
- 1.2. **Accommodation for People with Disabilities.** Any individuals with disabilities who wish to participate in public meetings such as a scheduled pre-response conference or other scheduled function should contact the Solicitation Coordinator to discuss any auxiliary aids or services needed. Such contact should be made no less than three (3) business days prior to the public meeting to allow time for the Solicitation Coordinator to provide needed aids or services.
- 1.3. **Responses Due.** The response must be received by the State on or before the date and hour designated for the response opening. Responses that are submitted untimely shall be rejected.

**2. Award Criteria**

- 2.1. **Single Award -- Lowest Cost.** A single contract will be awarded for all line items to the respondent whose response meets the requirements and criteria set forth in this ITB at the lowest cost.

**3. Standard Terms of the Solicitation**

- 3.1. **Respondent Registration.** Pursuant to Tenn. Code Ann. § 4-56-105 all respondents must be registered prior to the issuance of a contract or a purchase order. Respondents can register online at the State of Tennessee Supplier Portal:

[https://sso.edison.tn.gov/psp/paprd/SUPPLIER/SUPP/h/?tab=PAPP\\_GUEST](https://sso.edison.tn.gov/psp/paprd/SUPPLIER/SUPP/h/?tab=PAPP_GUEST)

- 3.2. **Respondent's Ability to Perform.** The State shall have the right to require evidence of the respondent's ability to perform the services or deliver the goods required

pursuant to the terms and conditions of this ITB.

- 3.3. **Quality of Workmanship and Materials.** Unit price responses are requested on goods or services that equal or exceed the specifications, unless the specifications limit the dimensions, brands, or model of goods or services. The absence of detailed specifications or the omission of detailed descriptions shall mean that only the best commercial practices and only first quality goods and workmanship shall be supplied.
- 3.4. **Performance.** The respondent who is awarded a contract will be responsible for delivering the goods or providing the services set out in this ITB. All goods or services are subject to inspection and evaluation by the State.
- 3.5. **Clarifications.** The State reserves the right to conduct clarifications or negotiations with one or more respondents. All communications, clarifications, and negotiations shall be conducted in a manner that is fair and transparent.
- 3.6. **Negotiations.** The State may elect to negotiate by requesting revised Cost Proposals from apparently responsive and responsible respondents. However, the State reserves the right to award a contract on the basis of initial responses received. Therefore, each response should contain the respondent's best terms from a price and technical standpoint. The State reserves the right to conduct multiple negotiation rounds. If the State exercises its right to enter into negotiations, it may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those identified issues during negotiations. All responsive respondents will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other price or service level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other method that does not reveal individual respondent pricing. During target price negotiations respondents are not obligated to meet or beat target prices, but will not be allowed to increase prices. All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in response improvement. Note that each clarification sought by the State may be unique to an individual respondent.
- 3.7. **Response Cancellation and Rejection.** The State may cancel this ITB in its entirety and reissue it in whole or in part.

The State may reject any or all responses in its sole discretion. Additionally, the State may reject a response that: (a) qualifies the offer to provide goods or services as required by this ITB; (b) proposes alternative goods or services unless expressly requested by this ITB; (c) involves collusion, consultation, communication, or agreement among respondents; (d) includes information the respondent knew or should have known was materially incorrect; or (e) does not comply with the terms, conditions, specifications, or performance requirements of this ITB.

After the State opens the responses, no price changes shall be permitted except pursuant to target pricing or best and final offer negotiations as specified in this ITB.

- 3.8. **Communications and Contacts.** Prospective respondents must direct communications concerning this ITB to the following person designated as the Solicitation Coordinator:

Tara Roark  
Department of General Services, CPO  
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower  
Nashville TN 37243-1102  
615-532-1837  
Tara.Roark@tn.gov

Unauthorized contact about this ITB with employees or officials of the State of Tennessee except as detailed in this ITB may result in disqualification from consideration under this procurement process. Notwithstanding the foregoing, respondents may alternatively contact:

Staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, service-disabled veteran owned, businesses owned by persons with disabilities and small businesses as well as general, public information relating to this ITB (visit <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--godbe-general-contacts.html> for contact information); and

The following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, and associated federal regulations:

Helen Crowley  
Department of General Services, CPO  
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower  
Nashville, TN 37243-1102  
615-741-1035  
[Helen.Crowley@tn.gov](mailto:Helen.Crowley@tn.gov)

- 3.9. **Responses Submitted by Mail.** If submitting a response by mail: (1) all prices must be typed or written in ink on the "Line Details" portion of this ITB; (2) any corrections, erasures, or other alterations to prices must be initialed by the respondent; and (3) the response shall be manually signed by the respondent in ink. Each individual response must be returned in a separate envelope package or container and must be properly labeled on the outside referencing the applicable event number and the response opening date. Responses should be mailed in a properly labeled sealed envelope to the following address:

Bidder Services  
Department of General Services, CPO  
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower  
Nashville, TN 37243-1102.

Failure to comply with these requirements may result in rejection of the response.

- 3.10. **Models Included in Response.** All goods identified in the response must be new, of current manufacturer production, and must have been formally announced by the manufacturer or provider of services as being commercially available as of the date of response opening. Goods may include internal refurbished or reconditioned

components normally used in the manufacturing process and deemed and warranted and sold as new equipment by the manufacturer.

- 3.11. **Respondent Certification.** By signing or electronically submitting the response, the respondent agrees to the terms and conditions of this ITB and certifies that all goods or services included in the response meet or exceed the Scope or Specifications of this ITB. The respondent agrees that, if it is awarded a contract, it will deliver goods or services that meet or exceed the specifications in this ITB.
- 3.12. **Exceptions or New Terms or Conditions.** Exceptions to terms and conditions or new terms and conditions proposed by the respondent that vary from this ITB may, in the discretion of the State, render the response nonresponsive. A response deemed nonresponsive will not be considered for an award of a contract.
- 3.13. **Conflict of Interest.** The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this ITB:
  - a. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
  - b. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
  - c. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.
- 3.14. **Specifications Govern.** Brands or model numbers identified in the specifications of this ITB are required to meet all written specifications. In the event of a conflict between specified brands and models and the written specifications, the conflict shall be resolved in favor of the written specifications.
- 3.15. **Firm Offer.** The response constitutes a firm offer that is irrevocable for ninety (90) days. An award of a contract shall, subject to necessary State approvals, be binding on the respondent without any further action by the respondent.
- 3.16. **F.O.B. Destination.** Respondent's prices shall include delivery of all items F.O.B. destination or as otherwise specified by the State.
- 3.17. **Tax Exemption.** The State of Tennessee is exempt from local, state, and federal excise taxes. These taxes shall not be included in respondent's prices. The successful respondent shall pay all taxes lawfully imposed on it with respect to any goods or services delivered in accordance with this ITB.

- 3.18. **Prompt Pay Discount.** Any prompt pay discounts offered by respondents shall be extended to all authorized users of the contract.
- 3.19. **Fixed Discount or Surcharge.** The percent discount or surcharge per line item must be fixed for the contract's term.
- 3.20. **On-site Inspection.** All respondents should visit the site to take exact measurements and examine the premises to become familiar with any problems or unusual circumstances. No allowances will be made by the State for errors in quotations due to any respondent not visiting the site prior to submitting their response. Respondents shall be responsible for their own measurements.
- 3.21. **Used Equipment.** When this ITB authorizes offers of used items, no used item is acceptable if serial numbers or any other manufacturer's identifying label or markings have been removed, obliterated, or changed in any way.
- 3.22. **Tennessee Contractor License.** Respondents shall be properly licensed as of the date it files a response to this ITB and shall provide evidence of compliance with all applicable provisions of the Contractors Licensing Act of 1994, Tenn. Code Ann. § 62-6-101, *et seq.* in providing the specified information within this ITB. Any response that does not comply with Tenn. Code Ann. § 62-6-119, when applicable, shall be rejected.
- 3.23. **Purchase of Materials for Highways or Roadways.** Respondents must comply with Tenn. Code Ann. § 54-5-135 when purchasing materials used for highway or road construction, resurfacing, or maintenance.
- 3.24. **Energy Star Products.** Any goods ordered by the State must be Energy Star certified and meet applicable Energy Star specifications for energy efficiency.
- 3.25. **Response Requested for Software Products.** Unit prices are requested for software products that meet the State's requirements. Alternative software products will not be accepted and, if included, may result in rejection of the response. Respondent must submit and supply throughout the contract term the most recent version or release available unless otherwise specified in this ITB. All responses must include full use license rights for the term of the contract or as otherwise specified in the contract. The State will not accept or make payment for outdated software versions or releases. Responses shall include software maintenance and support services when required in the specifications.
- 3.26. **Safety of Chemical Products.** All respondents awarded a contract must maintain, for all of its chemical products available under this Contract, a Safety Data Sheet ("SDS") on the chemical manufacturer's website. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is accessible to the public, free of charge.
- 3.27. **Professional Licensure.** All persons, agencies, firms, or other entities that provide legal or financial opinions, which a respondent provides for consideration and

evaluation by the State as a part of a response to this ITB, shall be properly licensed to render such opinions. Upon submitting the response, the respondent (and respondent employees and subcontractors, as applicable) must hold all necessary or appropriate business or professional licenses to provide the goods or services as required by the contract. The State may require any respondent to submit evidence of proper licensure.

- 3.28. **Department of Revenue Registration.** Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this ITB. To register, please visit the Department of Revenue's Tennessee Taxpayer Access Point (TNTAP) website for Online Registration and the Vendor Contract Questionnaire. These resources are available at the following: <https://tntap.tn.gov/eservices/> /#1
- 3.29. **Prohibition of Illegal Immigrants.** Any respondent awarded a contract shall comply with Tenn. Code Ann. § 12-3-309 and submit semi-annual attestations to the State.
- 3.30. **Inspection of Procurement File.** All respondents have the right to inspect the procurement file, prior to award, upon completion of the evaluation by the Central Procurement Office. Interested respondents should contact the Solicitation Coordinator following the response opening date or once the file is open for the seven (7) day inspection period. A "Notice of Intent to Award" letter will be sent to all respondents detailing which respondent(s) has been recommended for award and the evaluated award amount(s). Upon request, a reasonable opportunity to inspect the procurement file will be provided to the respondent.
- 3.31. **Protest by Respondent.** Pursuant to Tenn. Code Ann. § 12-3-514, any actual respondent may protest. Please refer to the Central Procurement Office's website to obtain a copy of the protest procedures and protest bond requirements or contact the sourcing analyst or category specialist at 615-741-1035. The website for the Central Procurement Office is as follows: <https://www.tn.gov/generalservices/procurement.html>. If a written protest and a protest bond are not received by the end of the seven-day period to protest then the Solicitation Coordinator will proceed with the contract award.

## GOVERNOR'S OFFICE OF DIVERSITY BUSINESS ENTERPRISE

### Efforts to Achieve Diversity Business Participation

The Governor's Office of Diversity Business Enterprise ("Go-DBE") is the State's central point of contact to attract and assist minority-owned, woman-owned, service-disabled veteran-owned, disabled-owned, and small business enterprises interested in competing in the State of Tennessee's procurement and contracting activities. These diversity business enterprises are defined as follows:

#### Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE)

Businesses that are a continuing, independent, for-profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more individuals in the minority or woman category who were impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, ethnic background, or gender.

#### Service-Disabled Veteran Business Enterprise (SDVBE)

"Service-disabled veteran-owned business" means a service-disabled veteran-owned business located in the State of Tennessee that satisfies the criteria in Tenn. Code. Ann. § 12-3-1102(8). "Service-disabled veteran" means any person who served honorably in active duty in the armed forces of the United States with at least a twenty percent (20%) disability that is service-connected, i.e., the disability was incurred or aggravated in the line of duty in the active military, naval or air service.

#### Small Business Enterprise (SBE)

"Small business" means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has total gross receipts of no more than ten million dollars (\$10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis.

#### "Disabled Business Enterprise (DSBE)

"Disabled Business Enterprise" means a business owned by a person with a disability that is a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one (51%) owned and controlled by one (1) or more persons with a disability, or, in the case of any publicly-owned business, at least fifty one percent (51%) of the stock of which is owned and controlled by one(1) or more persons with a disability and whose management and daily business operations are under the control of one (1) or more persons with a disability.

For additional program eligibility information, visit:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/program-eligibility.html>

### Instructions

As part of this Invitation to Bid, the respondent should complete the Diversity Utilization Plan below. To assist in your effort to seek and solicit the participation of diversity businesses on this solicitation, a directory of certified Diversity Business Enterprise firms may be found on the State's website at:

<https://tn.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?TN=tn&XID=1215>  
directory or by calling Go-DBE toll free at 866-894-5026.

### RESPONDENT'S DIVERSITY UTILIZATION PLAN

Respondent's Company Name:		
Solicitation Event Name:	Event Number:	
Respondent's Contact Name:	Phone: (     )	Email:
Does the Respondent qualify as the diversity business enterprise? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, which designation does the Respondent qualify? <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> SDVBE <input type="checkbox"/> SBE		
Certifying Agency:		

**Estimated level of participation by DBEs if awarded a contract pursuant to this ITB:**

Diversity Business Information (List all subcontractors, joint-ventures, and suppliers)	% of Contract	Estimated Amount	MBE/ WBE/ SDVBE/ SBE / DSBE Designation	Currently Certified (Yes or No)
Business Name:				
Contact Name:				
Contact Phone:				
Business Name:				
Contact Name:				
Contact Phone:				

If awarded a contract pursuant to this ITB, we confirm our commitment to make reasonable business efforts to meet or exceed the commitment to diversity as represented in our Diversity Utilization Plan. We shall assist the State in monitoring our performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans and persons with disabilities. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>

We further agree to request in writing and receive prior approval from the Central Procurement Office for any changes to the use of the above listed diversity businesses.

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name and Title of Signatory \_\_\_\_\_





#### 4. SCOPE:

- 4.1. **Scope.** The Contractor shall provide all goods or services and deliverables as required, described, and detailed in the Scope or Specifications set forth in the Invitation to Bid and meet all service and delivery timelines as specified by the Invitation to Bid.

#### 4.2. Warranty Clauses:

- 4.2.1. **Warranty.** Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge. Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

- 4.3. **Inspection and Acceptance.** The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

## **5. TERM OF CONTRACT:**

### **5.1. Term of Contract.**

- 5.1.1. This Contract shall be effective on November 22, 2021 ("Effective Date") and extend for a period of thirty-six (36) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.
- 5.1.2. **Renewal Options.** This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.
- 5.1.3. **Term Extension.** The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option.

## **6. PAYMENT TERMS AND CONDITIONS:**

- 6.1. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed Eight Hundred and Twenty-Five Thousand Two Hundred Fifty Dollars (\$825,250.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- 6.2. **Compensation Firm.** The prices identified in this Contract, whether derived from an awarded published catalog, price list, price schedule, or other mutually agreed upon source shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The prices identified includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- 6.3. **Travel Compensation.** The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- 6.4. **Invoice Requirements.** The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in this Contract. Contractor shall submit invoices and necessary supporting documentation to the State Agency that requested goods or services no later than thirty (30) days after goods or services have been provided.

a) Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

1. Invoice number (assigned by the Contractor);
2. Invoice date;
3. Contract number (assigned by the State);
4. Purchase order number (assigned by the State);
5. Customer account name: The State of Tennessee;
6. Customer account number (assigned by the Contractor to the above-referenced Customer);
7. Contractor name;
8. Contractor Tennessee Edison supplier ID number;
9. Contractor contact for invoice questions (name, phone, or email);
10. Contractor remittance address;
11. Description of delivered goods or services provided and invoiced, including identifying information as applicable;
12. Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
13. Applicable payment methodology of each good or service invoiced;
14. Amount due for each compensable unit of good or service; and
15. Total amount due for the invoice period.

b) Contractor's invoices shall:

1. Only include charges for goods delivered or services provided as described in this Contract and in accordance with payment terms and conditions set forth in this Contract;
2. Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
3. Not include a line item for Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal Property taxes, or income taxes; and
4. Include shipping or delivery charges only as authorized in this Contract.

The timeframe for payment (or any discounts) begins only when the State is in receipt of an undisputed invoice that meets the minimum requirements of this Section.

6.5. **Payment of Invoice.** A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

6.6. **Invoice Reductions.** The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with this Contract, to not constitute proper compensation for goods delivered or services provided.

6.7. **Deductions.** The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

6.8. **Prerequisite Documentation.** The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

- a) The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b) The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

7. **MANDATORY TERMS AND CONDITIONS:**

7.1. **Substitute Items Offered by the Contractor.** In the event that an awarded item is no longer being manufactured or is replaced by a functionally equivalent item with superior technological features to the item being replaced, Contractor may offer a substitute item ("Substitute"). The Substitute shall: (a) meet or exceed the functional, technical, and performance characteristics of the item being replaced; (b) not exceed the cost of the item being replaced by more than ten percent (10%); and (c) be available for order on the date Contractor requests to make the substitution. Contractor shall not make any substitutions for awarded items without the State's prior, written approval. Contractor shall submit any proposed substitutions to the Central Procurement Office and include sufficient information to show that criteria (a) -- (c) above are met. The Central Procurement Office may request sample Substitutes for inspection or testing.

7.2. **Purchase Order Release.** Agency submission of a purchase order to Contractor authorizes Contractor to deliver goods or provide services.

7.3. **Delivery.** Contractor shall provide all goods or services as required and described in this Contract and shall meet all service and delivery timelines specified in this Contract. All quotations shall be F.O.B. destination.

7.4. **Required Approvals.** The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

7.5. **Communications and Contacts.** All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email. All communications, regardless of method of transmission, shall be addressed to the

respective party at the appropriate mailing address or email address as stated below or any other address provided in writing by a party.

The Contractor:

Contractor  
Walter Reichert  
6701 Koll Center Parkway, Suite 120 Pleasanton, CA 94566  
walter.reichert@natus.com  
800-645-3616

State of Tennessee:

Lindsay Oliveras  
Department of Health  
710 James Robertson Parkway, Andrew Johnson Tower, 5th Floor  
Nashville TN 37243  
615-532-7148  
Lindsay.R.Oliveras@tn.gov

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- 7.6. **Modification and Amendment.** This Contract may be modified only by a written amendment signed by all parties and approved by all applicable State officials.
- 7.7. **Subject to Funds Availability.** The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- 7.8. **Termination for Convenience.** The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- 7.9. **Termination for Cause.** If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any

terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

- 7.10. **Assignment and Subcontracting.** The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

- 7.11. **Conflicts of Interest.** The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- 7.12. **Nondiscrimination.** The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- 7.13. **Prohibition of Illegal Immigrants.** The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a) The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information-.html>, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be

maintained by the Contractor and made available to State officials upon request.

- b) Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
- c) The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d) The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
- e) For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

- 7.14. **Records.** The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- 7.15. **Monitoring.** The Contractor's activities conducted and records maintained, pursuant to this Contract, shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- 7.16. **Progress Reports.** The Contractor shall submit brief, periodic, progress reports to the State as requested.
- 7.17. **Strict Performance.** Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- 7.18. **Independent Contractor.** The parties shall not act as employees, partners, joint ventures, or associates of one another. The parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee

relationship or to allow either party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party are not employees or agents of the other party.

- 7.19. **Patient Protection and Affordable Care Act.** The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- 7.20. **Limitation of State's Liability.** The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- 7.21. **Limitation of Contractor's Liability.** In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount and as may be amended. Except as set forth below, in no event will the Contractor be liable to the State or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- 7.22. **Hold Harmless.** The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice



shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

7.23. **HIPAA Compliance.** The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

- a) Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b) Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c) The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

7.24. **Tennessee Consolidated Retirement System.** Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, et seq., the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, et seq., accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

7.25. **Tennessee Department of Revenue Registration.** The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 -- 608. Compliance with applicable registration requirements is a material requirement of this Contract.

7.26. **Debarment and Suspension.** The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b) have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c) are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d) have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

7.27. **Force Majeure.** "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workarounds plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for

in this Contract as the result of a Force Majeure Event.

- 7.28. **State and Federal Compliance.** The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- 7.29. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 -- 408.
- 7.30. **Entire Agreement.** This Contract is complete and contains the entire understanding between the parties relating to its subject matter, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties, whether written or oral.
- 7.31. **Severability.** If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- 7.32. **Headings.** Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- 7.33. **Incorporation of Additional Documents.** Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a) any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b) this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below);
  - c) any clarifications of or addenda to the Contractor's response seeking this Contract;
  - d) the Invitation to Bid, as may be amended, requesting responses in competition for this Contract;
  - e) any technical specifications provided to respondents during the procurement process to award this Contract; and,
  - f) the Contractor's response seeking this Contract.

- 7.34. **Iran Divestment Act.** The requirements of Tenn. Code Ann. § 12-12-101 et seq., addressing contracting with persons with investment activities in Iran, shall be a material provision of this Contract. The Contractor agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

**7.35. Insurance Requirements:**

- 7.35.1. **Insurance.** Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number or federal employer identification number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation.

All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

The State agrees that it shall give written notice to the Contractor as soon as

practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

**7.35.2. Workers' Compensation and Employer Liability Insurance.**

- a) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
- b) Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes; or
- c) In an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- d) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 -- 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
  - 1. The Contractor employees fewer than five (5) employees;
  - 2. The Contractor is a sole proprietor;
  - 3. The Contractor is in the construction business or trades with no employees;
  - 4. The Contractor is in the coal mining industry with no employees;
  - 5. The Contractor is a state or local government; or
  - 6. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

**7.35.3. Commercial General Liability Insurance.**

- a) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence

form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

- b) The Contractor shall maintain bodily injury/property damage with a combined single-limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).

**7.35.4. Professional Liability Insurance.**

- a) Professional liability insurance shall be written on an occurrence basis. This coverage may be written on a claims-made basis but must include an extended reporting period or "tail coverage" of at least two (2) years after the Term;
- b) Any professional liability insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate; and
- c) If the Contract involves the provision of services by medical professionals, a policy limit not less than two million (\$2,000,000) per claim and three million dollars (\$3,000,000) in the aggregate for medical malpractice insurance.

- 7.36. **Major Procurement Contract Sales and Use Tax.** Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

- 7.37. **Confidentiality of Records.** Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

**8. SPECIAL TERMS AND CONDITIONS:**

- 8.1. **Conflicting Terms and Conditions.** Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and

conditions shall be subordinate to the Contract's other terms and conditions.

- 8.2. **Prohibited Advertising or Marketing.** The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- 8.3. **Equal Opportunity.** During the performance of this Contract, the Contractor agrees as follows:
- a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
    - 1. Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
    - 2. Layoff or termination;
    - 3. Rates of pay or other forms of compensation; and
    - 4. Selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
  - b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - c) If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.
- 8.4. **Lobbying.** The Contractor certifies, to the best of its knowledge and belief, that:
- a) No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - b) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c) The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

8.5. **Federal Funding Accountability and Transparency Act (FFATA)**. This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required. The Contractor shall comply with the following:

a) Reporting of Total Compensation of the Contractor's Executives.

1. The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
  - i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
  - ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
  - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.) As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.
2. Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
  - i. Salary and bonus.
  - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.



- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax qualified.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b) The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
  - c) If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
  - d) The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

8.6. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** If applicable and as required by 2 CFR 200.216, Grantee is prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system. As described in Public Law 115-232, Section 889, "covered telecommunications equipment" is as follows:

- a) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- b) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- c) Telecommunications or video surveillance services provided by such entities or using such equipment.
- d) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

**8.7. Procurement of Recovered Materials.**

- a) In the Performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price.
- b) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- c) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

**8.8. Intellectual Property Indemnity.** The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

**8.9. Extraneous Terms and Conditions.** Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid, and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned on the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.

**8.10. Use Warranty.** Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

**8.11. Software License Warranty.** Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.

**8.12. Software Support and Maintenance Warranty.** Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software

that it makes generally available to its customers.

- 8.13. **Personally Identifiable Information.** While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

- 8.14. **Additional Lines, Items or Options.** At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.

- a) After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:
  - 1. The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
  - 2. Any pricing related to the new lines, items, or options;
  - 3. The expected effective date for the availability of the new lines, items, or options; and
  - 4. Any additional information requested by the State.
- b) The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.
- c) To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.
- d) Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.